

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

William Edward Ferguson,

Petitioner

v.

Joe Lombardo, et al,

Respondents

Case No.: 2:21-cv-01658-JAD-NJK

**Order Denying Motion for Stay Order,
Granting Motion for Leave to Amend, and
Directing Petitioner to Show Cause Why
This Case Should Not Be Dismissed**

[ECF Nos. 3, 7]

William Ferguson initially brought this habeas corpus action under 28 U.S.C. § 2241 after a state jury had found him guilty of 7 counts of burglary, 2 counts of petit larceny, 1 count of attempted grand larceny, and 1 count of grand larceny but before the state district court entered its judgment of conviction.¹ The state district court entered its judgment of conviction on October 25, 2021.² Ferguson now has filed a motion for stay order,³ a motion for leave to amend,⁴ and an amended petition.⁵ I deny the motion for stay order as moot and grant the motion for leave to amend. I have also reviewed the amended petition under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. Because it appears that Ferguson filed this action before exhausting his state-court remedies, I direct Ferguson to show cause why I should not dismiss this action.

¹ ECF No. 1-1 at 1.

² ECF No. 6 at 1.

³ ECF No. 3.

⁴ ECF No. 7.

⁵ ECF No. 6.

1 **A. The motion to stay is moot.**

2 In his motion for stay order, Ferguson asks me to stay the state district-court proceedings
3 while this action is open. Ferguson incorrectly argues that filing a habeas corpus petition in
4 federal court removes jurisdiction from the state courts. Additionally, he was trying to stop the
5 state district court from entering its judgment of conviction, and that already has happened. His
6 motion thus is moot.

7 **B. Ferguson must show cause why this case should not be dismissed as premature.**

8 In the amended petition, Ferguson states that he has appealed the judgment of conviction
9 and that the appeal is pending.⁶ Ferguson must exhaust all of his potential remedies for all of his
10 claims in the state courts before he can pursue a petition for a writ of habeas corpus in federal
11 court.⁷ It appears that he has not exhausted any of his claims because his direct appeal still is
12 pending.⁸ Ferguson will need to show cause why I should not dismiss this action for lack of
13 exhaustion of the state-court remedies.

14 IT THEREFORE IS ORDERED that the motion for stay order [ECF No. 3] is **DENIED**
15 as moot.

16 IT FURTHER IS ORDERED that the motion for leave to amend [ECF No. 7] is
17 **GRANTED**. His amended petition [ECF No. 6] will be the operative one.

18 IT FURTHER IS ORDERED **that petitioner must show cause in writing by January**
19 **7, 2022, why this court should not dismiss this action for failure to exhaust state-court**
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21


22 ⁶ ECF No. 6 at 1, 2.

23 ⁷ 28 U.S.C. § 2254(b).

⁸ See *Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th Cir. 1983).

1 remedies. If, by that deadline, petitioner fails to show cause in writing that this action
2 should not be dismissed, the court will dismiss this action without prejudice.

3 Dated: November 22, 2021

4 
U.S. District Judge